



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Ben M. White Company

File: B-230033

Date: May 19, 1988

DIGEST

1. Where an invitation for bids (IFB) has been converted to a request for proposals, contracting agency need not negotiate with contractor that was ineligible for award under IFB because its proposal debarment was pending at bid opening.
2. Small Business Administration issuance of certificate of competency on prior procurement is not conclusive as to responsibility where protester since has been proposed for debarment.

DECISION

Ben M. White Company protests the award of a contract to Lynn Gee Construction Co., under invitation for bids (IFB) No. FO3601-87-B-0046, issued by Blytheville Air Force Base, Arkansas, for the landscaping of dormitory areas. We deny the protest.

On June 22, 1987, White was proposed for debarment by the Air Force, for reasons related to White's performance under an earlier Air Force contract. The IFB here was issued on July 14, 1987, and at the August 14 bid opening two bids were received, those of Lynn Gee and White. White was the apparent low bidder on both the base bid (\$244,500) and the deductive alternate bid (\$234,500); Lynn Gee's base bid was \$299,871, and its deductive alternate bid was \$263,871. Following bid opening, White was declared ineligible for award due to the proposed debarment. Lynn Gee's bid prices, however, substantially exceeded the government estimate of \$196,000 for the base bid and \$185,000 for the deductive alternate. Viewing the bid as unreasonable, the agency negotiated with Lynn Gee as the sole remaining bidder for a reduced price, ultimately making award to the firm on December 2 at a price of \$249,950 (for the base item). On the preceding day, December 1, unbeknownst to the contracting officer, the Air Force had terminated the proposed

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debarment of White; the contracting officer did not become aware of this action until December 7.

White argues that the proposed debarment did not render it ineligible for award and that, in any event, since the proposed debarment was lifted prior to award, it should have been awarded the contract as the lowest eligible bidder. We disagree.

As long as White was proposed for debarment, it was ineligible for government contracts under Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 9.406-1(70), which provides:

"If no suspension is in effect under FAR 9.407 at the time debarment is proposed by a Department, bids or proposals shall not be solicited from, contracts shall not be awarded to, existing contracts shall not be renewed or otherwise extended with, and subcontracts shall not be consented to or approved for the contractor by any DOD [Department of Defense] component pending a debarment decision unless the Secretary concerned or authorized representative states in writing the compelling reason to do so."

See Federal Acquisition Regulation (FAR) § 9.406-3(c)(7); see also FAR § 9.104-1(g). Neither the Secretary nor any authorized representative of the Secretary has determined that the provision should not apply to White in this case.

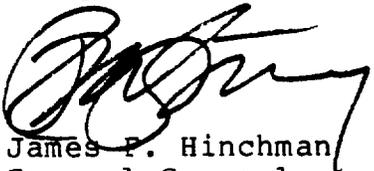
Although the proposed debarment was lifted on December 1, the day before award, the award to Lynn Gee was not improper for this reason. As indicated above, White was ineligible for award at bid opening and Lynn Gee was the only remaining bidder. Where all otherwise acceptable bids are at unreasonable prices, the contracting agency may properly cancel the IFB and convert the procurement to a negotiated one without issuing a new solicitation, subject to the requirement that a reasonable opportunity to negotiate be given to each responsible bidder that submitted a bid in response to the IFB. See FAR §§ 14.404-1(c)(6), 14.404-1(e)(1), and 15.103. Since White was ineligible for award at bid opening, however, the agency could not have made award to it under the IFB, see T & A Painting Inc., B-228483, Dec. 4, 1987, 87-1 CPD ¶ 553; accordingly, White was not a responsible bidder with which the agency was required to negotiate. See also FAR § 9.104-1(g).

The protester questions the effect of the June 22 Notice of Proposed Debarment, pointing out that the Small Business Administration (SBA) had granted White a Certificate of

Competency (COC) on the same date for a different contract. However, the fact that a firm has been found responsible and eligible for award of one contract does not require a similar finding for a later procurement. See generally Kirk Brothers, B-228603, Nov. 12, 1987, 87-2 CPD ¶ 479. We note that the contracting officer did not refer the matter to the SBA for a COC determination because White was ineligible for award at bid opening (see FAR § 19.602-1(a)(2)(i)), and the contracting officer was unaware of the lifting of the proposed debarment at the time of award to Lynn Gee.

White protests the amount of time taken by the Air Force to reach a final debarment determination (June 22 through December 1), citing FAR § 9.406-3(d), which requires that a decision be made within 30 working days after receipt of all information and argument by the contractor. In its report, the Air Force states that significant portions of the period lapsed pending receipt of White's submissions. Under these circumstances, plus the fact that White has submitted no evidence to show when the file was closed, we cannot say White has shown that FAR § 9.406-3(d) was violated.

The protest is denied.



James P. Hinchman
General Counsel